DOCUMENT RESUME

ED 299 604 CS 506 389

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TITLE The Dependency Model and the Syndication Rule.
PUB DATE Nov 88
NOTE 24p.; Paper presented at the Annual Meeting of the Speech Communication Association (74th, New Orleans, LA, November 3-6, 1988).
PUB TYPE Speeches/Conference Papers (150) -- Information Analyses (070)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Broadcast Industry; *Commercial Television; *Mass Media; *Programing (Broadcast); Television Research
IDENTIFIERS *Federal Communications Commission; Media Government Relationship; Media History; Power; *Prime Time Rule; Television Networks

ABSTRACT

In 1970, the Federal Communications Commission passed the Prime Time Access Rule, which directly affected the participation of the three commercial television networks in the production, transmission, and syndication of prime time programs. The result of this decision, as modified over the years since 1970, has shaped the television industry with respect to prime time television program production. The use of the Resource Dependence Model (developed by Gerbner and modified by Turow) will help in understanding this event and media history in general, and in analyzing the various participants in the event in terms of the power roles they play. As network television developed between 1947 and 1970, the essential resource changed from programs to transmission. Facilitating this change was the national penetration of retwork television and the capacity to record programs. The three networks controlled programming in order to attract or create audiences to be sold to the advertisers. The purpose of the syndication rules was to reduce the power the networks had over syndication rights for programs prior to their broadcast. The result of these rules was to alter the network's leverage over other, independent, producers and to improve their access to the audience through the exhibitor or local stations. If the model has accurately analyzed the situation with regard to power and environment it is also useful as a predictive tool and to help understand the historical development of broadcasting policies. (Thirty references are appended.) (MS)

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The Dependency Model and the Syndication Rule

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This paper was presented to the annual convention of the Speech Communication Association, New Orleans, 1988.

CS506389

In 1970, the Federal Communications Commission passed the Prime Time Access Rule (47 CFR 73.658 k), which directly affected the participation of the three commercial television networks in the production, transmission and syndication of prime time programs (F.C.C., 1970). A section of the decision dealt specifically with the divestiture of syndication ownership by the networks of programs they broadcast during the evening time period. The result of this decision, as modified over the years since 1970, has shaped the television industry with respect to prime time television program production and financing. The rule, set to expire in 1992, is currently being discussed in a variety of arenas ranging from the Motion Picture Production Association to the Office of the President. In fact, broadcasting and film industry negotiators are set to meet again, soon, to reach an agreement on the modification of the rules (Halonen, 1988). Given the upheaval produced by the 1970 decision and its amendments, a thorough understanding of the current negotiations and hearings relative to the various participants is crucial. The purpose of this report is to trace the historical events leading up to the 1970 decision and the amendments to the rule through 1983; and to make a prediction of how the rule will be structured before the 1992 date.

One method to aid the understanding of this event, and media history in general, is to use the Resource Dependence Model (more accurately renamed the Interdependence Model) first presented by Gerbner (1969) and later modified by Turow (1984). The essence of

this model is to analyze the various participants in an event in terms of the power roles they play. Essentially, power is the inverse of the degree of dependence a participant has on others affected by the event. For example, Tankel and Williams (1987) found that the participant with the most power affecting the growth of FM radio was the government when it promulgated the nonduplication rules of 1965.

Turow (1984) suggests a number of other power rules that might affect media structures, highlighting the interdependent activities created by those power roles--the resource dependence--as the process that shapes the quantity and quality of mass media products. He identifies thirteen power roles operating in the media industries. Although the roles are portrayed as distinct, they may be played by any participant; the dynamic of interaction defines the relation, not the specific function served by the participant. For example, Tankel and Williams note that the radio station produces many programs and messages for the mass audience. However, the role played by the station in their study of FM radio suggests that the primary function served was the Exhibitor. Further, the Exhibitor broadcast these messages to the Audience to attract Patrons or advertisers. The power in this relationship ultimately lies with the Patron because of the control over cash flow to the station. The Patron, therefore, has leverage in this relationship.

Remembering that participants can play various roles depending on what relationship is being discussed, radio stations can also be cast as Producers, competing for programming with other producers in the market. When playing this role, the Producer looks for a market

niche, defined by specific types of music or other programming, to attract a particular audience segment. Control over the niche makes entry difficult for other producers. Therefore, the dominant Producer controls the niche and has power or leverage when competing with other producers.

The agent which can exercise primary power in the mass media is the Authority or government. Tankel and Williams found decisions made by the Authority (F.C.C.) shaped the growth of FM, poorly at first, and later more seriously. The Authority, at least in terms of interstate communication, derives its power from the Communications Act of 1934, as defined by congressional oversight committees and other offices in the federal government and eventually the courts. For example, Authority interest in the economics of the television program marketplace, makes the study of the financial interest and syndication rule necessary today. In order to do so, we examine: 1) the environment for network program production prior to PTAR, 2) the politics of PTAR, 3) the environment for network program production under PTAR, and 4) suggest possible scenarios for the post-PTAR environment.

The Environments of Program Production (1947 to 1971)

Program production for networked transmission in prime-time (7 PM -11 PM Eastern, 6 PM-10 PM Central) has developed to date through three distinct environments: 1) advertiser (sponsor) dominance (1947 to the late 1950s), 2) network dominance before the Financial Interest and Syndication Rules contained in the Prime Time Access Rule [PTAR] (1960s to 1971), and 3) network dominance post-PTAR

(1971 to present). In each of these environments, there existed a delicate inter-dependence of forces that caused these programs to be produced. The difference between these environments is attributable to the changing financial logic under which the networks operated and the institution of regulatory constraints; in other words, changes in the power relationships and the control of resources influenced the way in which television programs were financed and produced.

Network prime time television programs were produced first by the advertising community in financial arrangements carried over from the operation of network radio (Barnouw 1968, 1978a, 1978b; F.C.C., 1970, 70-466; Bergreen, 1980). In essence, the fledgling television networks offered time slots to advertising agencies who produced the programs as representatives of their clients, the actual sponsors. Programs were transmitted live at first and the number of programs to be produced simultaneously was beyond the capacity of the networks, and the willingness of the advertising community to produce these programs permitted the networks to concentrate on creating the largest market of television homes possible. Therefore, the power to make creative decisions about program production resided at first outside the television networks in the relationship between those who produced the programs (the independent producers) and those who financed the production (the advertising community).

During the 1950s, television programs were recorded, first on film, and later on videotape. The capacity of film to be repeated allowed these programs to continue generating revenue after their

initial transmission by means of sales to other broadcast outlets, such as affiliate stations (for non-networked transmission), independent stations and foreign broadcast systems. The filming of television programs originated with independent Hollywood producers, such as Desi Arnez (Desilu Productions), Jack Webb (Mark VII Productions), and Jack Wrather (The Wrather Organization), who needed to finance production by off-network sales. The television networks were able to exploit this innovation in the same fashion, and, additionally, recording also eliminated the need for assistance in providing simultaneously produced programming for transmission. In addition, the networks could sell smaller units of time, the so-called "spot," thereby reducing the overt influence of the advertising community (Patron) over program decision making.

The potential for generating revenue by the sale of smaller blocks of time required the network to be willing to accept risk. The cost of developing and producing a successful program could be partially recouped by the sale of individual spot advertisements, and profit would result from additional exploitation of the property (off-network syndication and direct participation in first-run revenues), the cost of developing and producing unsuccessful programs would have to be absorbed as overhead. Television network executives, such as Sylvester "Pat" Weaver, the president of the NBC network, worked to rationalize the business environment by exploiting control of program transmission, seeking to maximize revenue by refining content (see Hirsch, 1972 and Dimaggio, 1977, for discussions of the sociology of culture industry production; see Bergreen, 1980, for the detail). Advertisers, who had previously

possessed leverage because the networks needed sponsor produced programming, were no longer necessary as program producers. By the end of the 1950s, the dominance of the advertising community in direct program decision making was severely limited (see Barnouw, 1978b, for an extensive account of this change).

The financial relationships that replaced direct program sponsorship placed ultimate production decision making power with the networks. In a 1965 Notice of Proposed Rulemaking (F.C.C., 1965), the F.C.C. posited that network dominance in program production created a conflict of interest when viewed in conjunction with network control of transmission. In particular, the Commission asked for comment on the relationship between: 1) the capacity of the networks to fulfill affiliate stations' programming needs to be exclusion of independent syndicators, 2) the exchange by the networks with independent producers of investment and transmission in return for direct, first-run revenue participation, and 3) network syndication of programs formerly transmitted on the network (off-network syndication) in competition with the same independent syndicators. In this way, the television networks not only controlled the production of programming for themselves, but their production decisions helped determine the availability of programs for syndication overall (see Brown, 1971, and Bergreen, 1980 for discussions of pre-1971 network practices).

In response to these perceived conflicts, the Commission proposed the 50/50 Rule that would limit the network to providing only one-half of the prime time programming for affiliated stations in the top 50 markets. In addition, the Commission intended: 1) to

prohibit networks from direct financial participation in programs produced by independent producers for the networks, 2) to bar networks from any domestic syndication, and 3) to bar networks from syndicating independently produced programs in foreign countries (F.C.C., 1965).

In September 1968, the Commission asked for oral arguments, but not on the 50/50 Rule as proposed. Respondents representing all segments of the production environment had agreed that the 50/50 Rule would be a burden on the television networks. The Commission modified its proposal according to the suggestions of Westinghouse Broadcasting Company (W.B.C.) and its president, Donald McGannon--financial interest and syndication restrictions would stand, but the networks could program up to three hours (four on Sunday) of prime time for their affiliates in the top 50 markets, excluding newscasts. Since the then-prevailing network practice was to program just three and one-half hours, the networks lost only one-half hour per night.

The oral arguments in December, 1968, and the various petitions that followed, demonstrated the differing interests (or, at least, the self-perception of each party's interest) concerning financial interest and syndication restrictions (Final Comments, 1970b). The networks argued against any change, and provided analysis of program production and selection practices conducted by the Arthur D. Little Company to support their view. Commission analysts subsequently uncovered errors in the way the networks presented the Little report, errors verified by Little (Networks Charged, 1970b). Stations in small markets were also strong opponents of change,

fearing the networks would cut back sharply on supplying programs if the additional revenue supports were removed.

Independent producers and the major motion picture companies, supported by the Department of Justice, endorsed the W.B.C. proposal, which had come to be known as the Prime Time Access Rule (PTAR), a designation that subsumed the financial interest and syndication restrictions, although later commission documents treat the rules as independent (F.C.C., 1983). Independent television stations supported the Rule, viewing it as means to the revival of the first-run syndication market as producers sought new outlets. The advertising community, which had adjusted to network control of production, did not express a particular view. As the prospect of Commission promulgation of the Prime Time Access Rule became imminent, some producers and craft unions did express doubt about PTAR. Prompted by network insistence that the rules would reduce drastically the number of hours produced overall (see Commissioner Cox's concurring opinion, in F.C.C., 1970, for a discussion of these last minute fears). Finally, in May 1970, the F.C.C. adopted the Prime Time Access Rule, with each element to be implemented within a time frame intended to cause the least disruption to network television programming.

Resource Interdependence Prior to Fin-Syn

The preceding delineation of the shifting environments for network program production from 1947 to 1971 can be explained by an analysis based on changes in resource interdependence. As network television developed, the essential resource changed from programs

(1947 to 1955) to transmission (1955 to 1971); facilitating this change was 1) the national penetration of network television (see Sterling & Haight, 1978, for statistics on national television trends in this period, and 2) the capacity to record programs. When access to national audiences no longer required control of programming, the advertising community relinquished its Producer role for the less risky role of Patron to the networks, providing direct financial support in exchange for time within network produced and leased programs.

Conversely, the networks assumed the role of Producer to strengthen their Distributor role vis-a-vis their affiliated stations. The three networks controlled programming in order to attract or create audiences to be sold to the advertisers, both national and local (Smythe, 1981). In addition, the networks also became Patrons to the independent producers in return for financial participation, thereby financing their own production in competition with the producers from whom they were to lease programs. It was in response to these multiple, and contradictory, power roles that the F.C.C. intervened, maintaining that network control of transmission (Distributors)--a necessary resource for independent program producers--conflicted with the roles in program production (Producer and Patron), thereby unfairly restraining competition. The F.C.C. response was to limit the power roles a network could occupy in order to establish a resource interdependence intended to favor diversity in program production.

The Authority: Prime Time Access Rule

Key to understanding the applicability of the Resource Dependence (Interdependence) Model to the study of the Prime Time Access Rule and the financial interest restrictions is an analysis of the legal environment. Significant changes in the environment are often the result of an agent or participant exerting its power or leverage position. An analysis of this exercise and various power relationships should lead to an understanding of why such events occur.

The purpose of the syndication rules was to: reduce the power the networks had over syndication rights for programs prior to their broadcast (F.C.C., 1983). The result of these rules, in terms of the Interdependence Model, was to alter the network (Producer) leverage over other, independent, producers and to improve their access to the Audience through the Exhibitor or local stations.

The ultimate abridgement of the power of the authority is the court system. One producer, Mt. Mansfield and many other petitioners, appealed the syndication rules in 1972. The decision affirmed the power role assumed by the Commission, finding that the rules did not infringe on the First Amendment rights of the producers (networks) nor the exhibitors--stations or licensees (Mt. Mansfield, 1972).

Prior to the enactment of the Access Rule, networks clearly had the power when dealing with their affiliates (Exhibitors). Further, no specific provision in the Communications Act of 1934 permits the direct regulation of the networks by the Federal Communications Commission. However, there are several indirect methods of

instituting regulations on the Producers (networks). One method, used in the Prime Time Access Rule, was to limit prime time hours to the top fifty markets with three competing television stations. Since all network owned stations were in the top fifty markets, these rules applied to them. The Producers or networks could not offer programs to their affiliates that differed from their own stations. Therefore, the rules applied to the networks, indirectly through their owned stations. The application of the financial interest provision precluded network owned television stations from broadcasting programs whose rights were obtained by the networks after 1970.

The Mt. Mansfield case tested the power or leverage of the Producer and Exhibitor over the Authority. Specifically dealing with the financial interest provision, the courts found that rules applied to stations "engaged in chain broadcasting" were not an infringement on the networks. Further, the Commission had the authority to provide a diverse marketplace of programming. This decision generally affirmed the general power position of the Authority over the Producer.

Another Authority regulating the broadcasting network was the U.S. Department of Justice. In 1972, the Department entered anti-trust suits against the three networks aimed precisely at the issues addressed by the F.C.C. in the Prime Time Access Rule. The result of negotiations between the networks and the Department were restrictions on program ownership and production that surpassed those initiated by the Commission (F.C.C., 1983).

The Access Rule underwent many changes from 1972 to 1977. One result of these modifications was a network inquiry, charged by the F.C.C. in 1977, to study the effects of the Access Rule on network dominance of their affiliates. Further, the Commission was interested in recommendations from the inquiry staff concerning possible restructuring of the three network system to relieve pressures on program production and procurement.

The Network Inquiry staff released its report in 1981. The conclusion, concerning the financial interest rule was that neither vertical nor horizontal integration of the networks into the production and distribution of programming would produce a monopoly situation. This analysis applied not only to the 1980s, but also to the 1970s when the rules were promulgated. In fact, the open market concept would add diversity to programming by allowing the networks to share both in production costs and post production, syndication profits. The Commission ignored this advice. In fact, it did not officially respond to this report when it was released (F.C.C., 1983).

In 1982, the Commission instituted a rulemaking procedure to address the disparity between the Inquiry report and the then present rules. The presumption of the Commission when promulgating rules in this area was that increased diversity and competition were desirable goals. They categorized diversity in terms of source diversity (Producers) and outlet diversity (Exhibitors). Competition was defined as a broadcasting system devoid of monopoly controls. In the analyses of data received for this rulemaking, the Commission noted several changes in the production and distribution

systems. First, there was a significant increase in traditional delivery systems (television stations) or Exhibitors. Second, newer technologies, especially cable television, had dramatically increased the number of homes "passed" and had changed from a retransmission system to a program producer (Exhibitor and Producer). The result was an increase in the average number of signals per household from three in 1970 to 9.8 in 1983. Other technologies, such as multi-point distribution services had also entered the marketplace. Finally, there were twenty-five syndicators responsible for 117 series with the largest share of the market being 16.5%. The top four syndicators controlled 48.4% of the market. The result of this analysis was that viewers had more options and that these trends will continue as cable television penetration continues to increase and new program services are introduced. The ability of one program source to dominate this market will be very unlikely in the future.

One economic hazard noted by the Commission in 1983 was to the growth of independent television stations. Based on the "warehousing" theory, the networks, if they controlled syndication rights, could warehouse programs currently broadcast by independent stations from 4:00-8:00 p.m. The effect would stunt the growth of the independent stations. The possibility of this effect led the Commission to continue regulations relevant to the syndication rules. However, no justification for the financial interest rules could be found. Based on the analysis discussed above, the Commission felt that allowing the networks to share in production costs and post production profits of some programs would increase

competition. Therefore, the new syndication rules, similar to the ones decreed by the Justice Department, only pertained to potential harm to the independent stations. Specifically, it dealt with "...prime time entertainment series, upon which the independents rely for off-network stripping." Networks could participate in foreign syndication and non-network exhibitions. Warehousing was eliminated by requiring the networks to sell rights to prime time programs to an "unaffiliated syndicator" within six months of the series completion (F.C.C., 1983).

Program Production Under PTAR

As the various provisions of PTAR went into effect, Crandell (1971) published a stinging academic attack on the Commission's decision to intervene. Using figures supplied to the Justice Department and by the networks in a separate inquiry, Crandell pointed to trends already evident in the practice of production for the networks. He affirmed the disappearance of the advertiser dominated program, citing the increased cost of production that put full program sponsorship outside of the limit of acceptable financial risk. He also disputed the Commission's conclusion that program production was becoming centralized, pointing to an overall increase in the number of program producers form 1957 to 1968, while admiting a slight decrease in the number of program suppliers to the networks. In syndication, the networks controlled one-fourth of the syndication market, with distribution rights in only 28 percent of the programs they transmitted. Most damaging to the Commission's

case was Crandell's alternative explanation of network production practices.

> An alternative and more likely explanation of the network's investment in ancillary interests in programming is that they simply buy such interests by paying higher costs per program. If networks pay suppliers for their syndication interests, what will be the effect of prohibiting such investments? Clearly it will be to lower the prices paid by networks to the producers for their programs (Crandell, 1971, p. 400).

He concludes by asking "Will [fin-syn rules] lead to a change in network program decisions?," and then proceeds to demonstrate econometrically that there is no correlation between network ownership of distribution rights and the decision to keep a program in the network schedule. The results of the fin-syn rules would have, if Crandell had been correct, lowered the prices paid for prime time programs, opened the syndication market, and have been a restraint on the diversity of programming broadcast by the individual station, in direct contradiction to the expressed intent of the Commission.

As network production practices played out under the new rules, a number of researchers (such as Domminick & Pearce, 1976) examined the trends of program diversity on network television from the 1950s, with most finding a continual decline. Wakshlag and Adams (1985) concluded that their encompassing study

> ...did find that the introduction of PTAR coincided with a decline in program variety in prime time, but was unable to find any evidence supporting a direct or straightforward effect (p. 32).

In essence, various academic studies undertaken after PTAR verified Crandell's conclusion that inhibitions on program diversity are inherent in the general practice of program production for the

network and, as such, are independent of rulemaking such as PTAR, which only had the effect of reinforcing historic patterns. The 1980 F.C.C. Network inquiry reached a similar conclusion, only to be ignored by the Commission.

The network dominance of the prime time program production market has been challenged, but not by Commission intervention. The economics of production dictate that networks will opt to lease programs that attract the largest audiences. Besen, et al., (1984), all of whom served on the 1980 Network Inquiry staff, concluded that

> Economic analysis reveals that all television network programs will not necessarily receive an identical price because these programs are heterogeneous and network entry is restricted. Rather, relative bargaining strengths of the parties will determine where, within specified limits, prices will be set. The lower limit is established by the suplier's reservation price; the networks cannot pay less than the opportunity cost of program production. The upper limit is the supplier's opportunity cost plus the difference between the revenue that the program generates and the revenues the network would receive from the best alternative program not purchased (p. 100).

The effect of syndication participation on the part of the networks indicated only that the networks reduced their prices in amounts similar to the value of the lost syndication rights. Their general conclusion was most direct: "...federal rules aimed at the program supply process have been fundamentally misguided (p. 145)."

The conclusions reached by Crandell, the Network Inquiry, and Besen, et al. accurately reflect the conclusions drawn by most participants in this complex interdependent process. With the exception of the networks and some, but not all, of their affiliate stations, the other parties have expressed their desires to see the financial participation and syndication rules remain in place. The

advertisers (Patrons) and the F.C.C. feel the rules have allowed independent stations to compete with network affiliates, a view shared by independent stations (competing Exhibitors). The independent producers (competing producers), represented by the Motion Picture Association of America, feel they would lose what leverage they now have with the networks. Ultimately, the decision rests with the Authority. The Justice and Commerce Departments seem to favor repeal, since anti-trust laws should be adequate to deal with documented restraint-of-trade; while the F.C.C. itself has wavered in its professed belief in the free marketplace, first favoring repeal, then recanting (Wines, 1982; "Who's saying what..., 1983).

Interdependence Model and PTAR Future

The continual imposition of the syndication rules is not sustainable as a regulatory policy intended to generate program diversity in prime time. In terms of the growth of program production overall, the number of program suppliers has increased, but so have the outlets for those suppliers--the number of independent television stations has increased in the last ten years, and the number of cable television homes has increased to more than 50% of American television homes. As Cantor and Cantor (1985) observed, the arguments now are reduced to political ones, with the networks arguing for repeal; while the independent stations, the independent program producers, the program syndicators, the advertising community and the Hollywood creative community are aligned against repeal, albeit for differing reasons. One

interpretation of the failure of the Commission to repeal the fin-syn rules in 1983 was the intervention of Congress and then the President, a former actor with strong ties to program production community ("A come-from-behind..., 1983).

Currently, the issue is moribund, as the Authority waits for positive negotiations among the players ("Fin-syn phoenix..., 1985; Veraska, 1985; Halonen, 1988). Meanwhile, the contours of the program production and syndication marketplaces is being altered by the continued growth of alternatives to network broadcasting (basic and pay cable services, independent stations, home video, and a fourth broadcast network). However, the future of the financial participation and syndication restrictions rests in the Authority's determination of the impact of continued imposition, a determination that must take into account the fundamental false assumptions about network behaviors upon which the Fin-Syn rules were based. Nevertheless, the misapplication of Authority power on the part of the F.C.C. does not diminish the primary nature of that power in the functioning of the network television system.

The player with the ultimate power is the Federal Communications Commission (Authority). Their inability to analyze economic data resulted in the 1970 version of the rules and a failure to immediately respond to the Network Inquiry released in 1980. The Commission has a history of problems in this area. One need only to trace the development of cable television rules to support this conclusion. This trend ends with the appointment of Charles Ferris to chair the Commission. One of his first decisions was to appoint economists to the five major positions in the Office

of Plans and Policy (Tunstall, 1986). The response of the Commission to the Network Inquiry testifies to a sensitivity to economic data when making major decisions affecting the programming marketplace. The resultant reshaping of the rules in 1983 suggests that the Commission favors a modification of the rules prior to 1992.

The method of decision making instituted in past F.C.C. decisions might also suggest the unwillingness of the Commission to exercise its power or leverage in this issue. For example, the must carry rules recently promulgated involved negotiations between industry spokespersons resulting in the Joint Industry Agreement (F.C.C., 1986). A similar procedure is currently unfolding for fin-syn. Negotiators from the networks and the film industry will be meeting in the very near future to discuss how the rules should be modified. The networks argue that increased competition, verified by the F.C.C. (F.C.C., 1983), necessitate participation in the ownership of programs. To get this change, speculation is that they will be required to limit in-house productions thus molifying the film industry and program producers--a necessity to preclude congressional intervention similar to the one in 1983 (Halonen, 1988).

In terms of the model, who has the leverage and is willing to exercise it? This anlaysis suggests that some industry settlement will result in the new rules. The Commission or Authority has abdicated its leverage in favor of industry agreement, although it clearly favors relaxing the rules as long as independent stations are protected from warehousing. In terms of which industry has

leverage, neither one controls the program and syndication marketplace. There are far too many participants for any one player to achieve power. The network contracts effectively control distribution channels necessary to attract the Audience and the Patrons. The producers control the product or programs. A symbiotic relationship exists. Therefore, based on the model, the resulting new rules will no doubt limit network production rights, but will allow them to have ownership rights in concert with current program producers. The independent stations are arguably protected by the economics of the marketplace. The networks are more interested in procuring programs that will attract audiences than unfairly limiting competition from independent stations.

In conclusion, the interdependence model is a useful tool for the understanding of the historical development of broadcasting policies. It also seems to have some predictive power if the preceding power and environmental analysis are accurate. Future studies should focus on making these analyses more sophisticated to allow more precise predictions of these policies.

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